UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

WINFORD COBB, CALEB CULVER, MILTON FOSTER, MATTHEW HAHN, FRANKIE HANTZ, NOVIS LANNISE HANTZ, COLLIN JONES, EMANUEL SLEDGE and STEVEN WILSON	§	
Plaintiffs,	§	
	§	
V.	§	CIVIL ACTION NO. ____________
	§	**[Jury Demanded]**
MARATHON PETROLUEM COMPANY, LP	§	
Defendant.	§	

PLAINTIFFS' ORIGINAL COMPLAINT AND FEDERAL RULE OF CIVIL PROCEDURE 65(B) TEMPORARY RESTRAINING ORDER, REQUEST FOR PRELIMINARY INJUNCTION AND REQUEST FOR IMMEDIATE EMERGENCY *EX PARTE* AND RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs, WINFORD COBB, MILTON FOSTER, CALEB CULVER, MATTHEW HAHN, FRANKIE HANTZ, NOVIS LANNISE HANTZ, COLLIN JONES, EMANUEL SLEDGE and STEVE WILSON complaining of MARATHON PETROLEUM COMPANY, LP ("Defendant"), setting forth grounds for their Original Complaint and Federal rule of Civil Procedure 65(B) Temporary Restraining Order, Request for Preliminary Injunction and Request for Immediate *Ex Parte* and Relief and for cause would show as follows:

I.

PARTIES

1. Plaintiff, MILTON FOSTER, is a resident of the State of Texas.

2. Plaintiff, EMANUEL SLEDGE, is a resident of the State of Texas.

3. Plaintiff PATRICK COBB is a resident of the State of Texas.

4. Plaintiff, CALEB CULVER, is a resident of the State of Texas.

5. Plaintiff, FRANKIE HANTZ, is a resident of the State of Texas.

6. Plaintiff, NOVIS LANNISSE HANTZ, is a resident of the State of Texas.

7. Plaintiff, MATTHEW HAHN, is a resident of the State of Texas.

8. Plaintiff, STEVE WILSON, is a resident of the State of Texas.

9. Plaintiff, COLLIN JONES, is a resident of the State of Texas.

10. Defendant, MARATHON PETROLEUM COMPANY, LP ("MARATHON") is a Delaware Corporation with its Principal Place of Business located in Ohio and conducting business in the Southern District of Texas. MARATHON may be served with summons through its registered agent CT Corporation System, 1999 Bryan St. Ste. 900, Dallas TX 75201-3136. Upon Entry of the Temporary Restraining Order the Plaintiff request the U.S. Marshalls Office immediately serve the registered agent and deliver actual notice of the Court's Order to MARATHON personnel located at the Marathon Texas City Plant located at 1320 Loop 197, Texas City, TX 77590.

II.
JURSIDICTION AND VENUE

11. Complete diversity of citizenship exists and the amount in controversy exceeds $75,000. *See* 28 U. S. C. A § 1332(a).

12. Venue is proper in this district and division, as the Defendant conducts business in this District and Division. *See* 28 U. S.C. A. §1391 (d).

III.
FACTS

13. Plaintiffs work in various capacities for Total Safety ("Total Safety"). Total Safety was retained by MARATHON to perform work and services in the Marathon Texas City Plant located at 1320 Loop 197, Texas City, TX 77590 ("Plant"). Specifically, the Plaintiffs were assigned to work in the ALKY Unit located in the Plant ("Incident Site").

14. On Wednesday, September 7, 2016, the Plaintiffs were performing their work duties at the Incident Site. Unknown and undisclosed to the Plaintiffs, MARATHON personnel dressed in complete "hazmat gear" opened a flange UP-WIND from the Plaintiffs' location. The acts of the MARATHON employees caused a sudden and immediate release of Hydrofluoric Acid Gas ("HF Gas"). The MARATHON employees did not immediately warn the Plaintiffs, who were immediately visible and known to MARATHON employees. The release of HF Gas was detected by the laser detection system, which signals MARATHON employees in the control room. The release of HF Gas was also visible on the video system in the plant. NO MARATHON EMPLOYEE SOUNDED ANY ALARM FOR THE RELEASE.

15. Instead the MARATHON employees made a conscious and deliberate choice not to warn the Plaintiffs that the flange was to been opened and/or signal any alarm when MARATHON knew the deadly and harmful HF Gas had be release immediately upwind of the Plaintiffs.

16. The cloud of HF Gas enveloped the Plaintiffs. The release was so concentrated certain Plaintiffs could not be visibly seen. Certain Plaintiffs immediately lost consciousness, and all felt the immediate and harmful effects of the HF gas. The Plaintiffs still suffer from permanent severe physical and mental effects of the exposure to HF Gas.

17. Documents exist to show the nature and extent of the release. Video exists of the release and the events surrounding the Plaintiffs exposure to the deadly and harmful HF Gas. The general condition of the Accident Site remains somewhat undisturbed and other tangible and physical evidence exists at the Accident Site.

IV.
CAUSES OF ACTION

18. Plaintiffs hereby adopt and incorporate by reference the Fact sections above, and alleges the following causes of action and damages against MARATHON:

1. **Negligence;**
2. **Gross Negligence; and,**
3. **All Damages and Punitive Damages.**

V.
APPLICATION FOR TEMPORARY RESTRAINING ORDER

19. **Plaintiffs request immediate and emergency *ex parte* hearing and relief, as follows.**

20. Plaintiffs' application for temporary restraining order is also authorized by **Federal Rule of Civil Procedure 65(b)** and would show as follows:

1. A strong probability exists that ***Plaintiffs will prevail on their causes of action*** against Defendant and other potentially responsible parties following trial on the merits.
2. A temporary restraining order is needed because the harm could be **imminent** and **irreparable**. If indeed the site is altered or repaired, Plaintiffs will not be able to determine the circumstances that caused or contributed to the incident.
3. The injunction will not substantially harm other interested parties; and

4. Issuance of the injunction is in the public interest.

See Cobell v. Norton, 391 F. 3d 251, 258 (D.C. Cir 2004) (noting the supporting affidavit does not personal knowledge and is not required to meet the Rule 56€ standard).

21. Plaintiffs assert that the Defendant may change, alter, or destroy the Incident Site or related video and written documents in question, including the status of the work progress, damages resulting from the accident, as well as any other details or evidence at or near the scene. This Court may prevent this destruction by the entry of a Temporary Restraining Order, restraining Defendant from changing, altering, or destroying the accident scene and all surrounding tangible evidence related to the accident. In order for Plaintiffs to properly investigate their claim, pursue their claim, and recover their damages and see that justice is done, this Court should restrain the Defendant, its agents, corporate parents, servants, employees, contractors, contract employees, attorneys and those acting in concert with said Defendant from changing, altering and/or destroying the scene of the event or evidence of any kind. If Defendant is permitted to change, alter or destroy the accident scene, or evidence, Plaintiffs will lose the opportunity to inspect and photograph the accident scene, and will be unable to prosecute their claim and this they will be deprived of their remedies at law. There is no adequate remedy at law available to the Plaintiffs to prevent Defendant from changing, altering or destroying the accident scene, as well as moving, removing, or altering, any and all tangible evidence, including but not limited to any and all tools, instrumentalities, and/or devices which may have been used by as well as any and all physical evidence of any kind in any way connected with the Incident Site.

22. An immediate and emergency need, to enter the Incident Site, exists before it is necessarily

altered. Such alteration of the scene will, forever destroy the accident scene. Pursuant to **Federal Rule of Civil Procedure 34 (a)(2)**, Plaintiffs request the right to immediately enter the Incident Site to:

1. Inspect;
2. Measure;
3. Survey;
4. Photograph;
5. Test; or
6. Sample.

23. Plaintiffs pray that this Court issue an Order permitting the Plaintiffs' attorneys and investigative staff, including, but not limited to consulting experts, to enter upon the Defendant's facilities in question to inspect, photograph, test, sample and video the Incident Site. Such entry for the purpose of inspection, photographing, and filming, is essential in order for the Plaintiffs to prepare their cause and to see that justice is done. Therefore, the Plaintiffs request an immediate right to enter and inspect the property.

24. Specifically the Plaintiffs ask the court to grant a Temporary Restraining Order as follows:

1. The Plaintiffs' attorney and expert be granted immediate permission to enter the Marathon Texas City Plant located at 1320 Loop 197, Texas City, TX 77590 ("Plant"), ALKY Unit located in the Plant ("Incident Site"),to inspect, measure, survey, photograph, test and/or sample;
2. MARATHON will be ordered to immediately provide the personnel necessary to accompany Plaintiffs' attorney and expert during the Incident Site.

3. No repairs or alterations be made to the Incident Site at until this Temporary Restraining order is lifted and it is determined that no further inspection is necessary; and

4. Order Defendants to preserve all documents, video recordings, audio recordings, voice mails, emails, texts and any other document or communication related in any way to the incident or site.

25. Plaintiff is willing to post a reasonable bond as determined by the Court.

26. Plaintiffs would further pray for this Court to set a hearing on Preliminary Injunction on this matter.

27. Plaintiffs hereby demand a jury trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray:

1. That Defendant be cited to appear and answer herein;
2. That Plaintiffs recover actual and exemplary damages in excess of the minimum jurisdictional amount of this Court;
3. That the Plaintiffs have their cost, prejudgment interest at the maximum legal rate and post-judgment interest at the maximum legal rate;
4. The Plaintiffs Temporary Restraining Order and Preliminary Injunction and Entry to Land be granted;
5. That Plaintiffs have trial by jury; and
6. That Plaintiffs have whatever other and further relief at law or in equity to which they may show themselves justly entitled.

Respectfully submitted,

BARTON LAW FIRM

By: */s/ Daniel P. Barton*

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AFFIDAVIT

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared WAYNE D. COLLINS, who, after being duly sworn, on his oath did depose and say the following:

"My name is Wayne D. Collins. I am over twenty-one years of age, of sound mind, and have never been convicted of any crime or offense. I have personal knowledge of the facts and statements recorded in the foregoing Plaintiffs' Original Complaint and Federal Rule of Civil Procedure 65(B) Temporary Restraining Order, Request for Preliminary Injunction and Request for Immediate Emergency Ex Parte and Relief. I hereby state and affirm that each and every statement made herein is true and correct."

____
WAYNE D. COLLINS

SWORN AND SUBSCRIBED to before me, the undersigned authority, by affiant on the ________ day of September, 2016, to which certify my hand and official seal.

____
NOTARY PUBLIC, STATE OF TEXAS

____

My Commission expires ________________